

BOZEMAN PASS ZONING REGULATION

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Nona Chambers, Secretary, Chestnut
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Section 1: GENERAL PROVISIONS

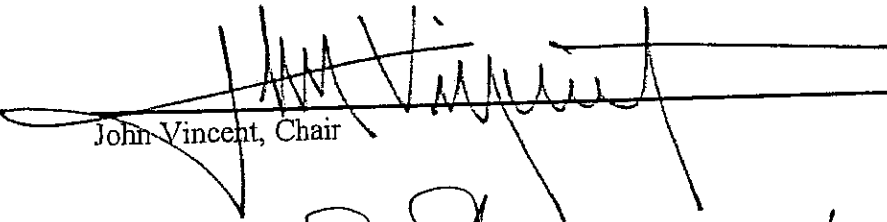
1.01 Title, Creation and Adoption

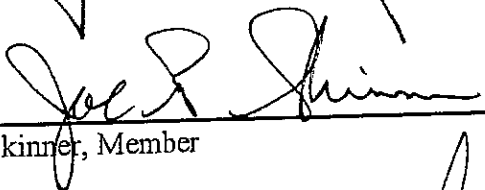
- 1.01.1 This Regulation shall be known as the Bozeman Pass Zoning Regulation. It is adopted for the Bozeman Pass Zoning District (the “District”), which was created on December 6, 2005.
- 1.01.2 These Regulations were adopted by the Bozeman Pass Planning and Zoning Commission (see Section 4.01) on April 13, 2006.
- 1.01.3 These Regulations were adopted by the Gallatin County Board of County Commissioners on May 16, 2006.
- 1.01.4 These Regulations are adopted pursuant to §76-2-101 *et sec.*, MCA, and in accordance with the Gallatin County Growth Policy.
- 1.01.5 Copies of these Regulations and Zoning Map are on file for public inspection with the Gallatin County Clerk and Recorder’s Office and the Gallatin County Planning Department (Planning Department).

ADOPTION

The County Commission adopted these Regulations on May 16, 2006.

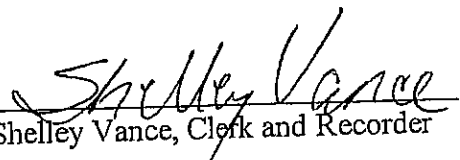
GALLATIN COUNTY COMMISSION


John Vincent, Chair

 5/18/06
Joe Skinner, Member


William A. Murdock, Member

ATTEST:


Shelley Vance, Clerk and Recorder

1.02 Application of District Regulations

- 1.02.1 Minimum Requirements. The requirements established by these Regulations are minimum requirements and apply uniformly to each class or kind of structure throughout the District. Regulation provisions shall be held to the minimum that protects and promotes the public health, safety and general welfare of the District.
- 1.02.2 Zoning Regulation Conformance. All new activities are potentially subject to the provisions of these Regulations. Property owners are responsible for ensuring all activity within District boundaries conforms with these Regulations.
- 1.02.3 Nonconforming Uses. Existing non-conforming uses may be continued although not in conformity with such these Regulations (§76-2-105, MCA).
- 1.02.4 Exception. Under certain circumstances, the Zoning Enforcement Agent may exempt public utility pipelines, wells, or structures necessary for provision of services required for public health and safety, from any provision of these Regulations.
- 1.02.5 Vesting. An application made within the District is subject to the regulations that are in effect at that time.
- 1.02.6 Contradictions. If the requirements of these Regulations conflict with the requirements of any other lawfully adopted rules, regulations or covenants, the most restrictive (or higher standard) shall govern.
- 1.02.7 Natural Resources. These Regulations do not regulate lands used for grazing, horticulture, agriculture, or the growing of timber in accordance with §76-2-109, MCA.

1.03 Establishment of Sub-Districts (Zoning Classifications)

- 1.03.1 Sub-Districts. The District is hereby divided into zoning classifications subdistricts," as shown on the Zoning Map and as explained in these Regulations.
- 1.03.2 Interpretations. If questions arise concerning an appropriate classification for a particular use, the Zoning Enforcement Agent and/or the Planning and Zoning Commission shall determine the appropriate classification. In interpreting use classification, the Zoning Enforcement Agent or Planning and Zoning Commission shall determine that the use:
1. Is compatible with permitted uses within the district.
 2. Is similar to one or more uses permitted in the district.
 3. Will not cause substantial injury to area property values.
 4. That the intent of the Regulation will not be abrogated by such classification.

1.04 Intent and Purpose

- 1.04.1 These Regulations have been made in accordance with the Gallatin County Growth Policy (adopted April 15, 2003) and the Bozeman Pass Development Pattern and Development District for the purpose of furthering the health, safety, and general welfare of the people of the District pursuant to §76-2-104, MCA. Additionally, these Regulations are designed to maintain the rural residential and agricultural character of the neighborhoods within the District by planning and guiding future growth. The adopted Bozeman Pass Development Pattern and Development District, hereafter known as the Development Pattern and Development District, adopted by the Bozeman Pass Planning and Zoning Commission on April 13, 2006 and adopted pursuant to Resolution 2006-052 by the Gallatin County Board of County Commissioners on May 16, 2006 establishes the goals and implementing objectives of the District, and shows the Bozeman Pass Planning and Zoning Commission's recommendations for the physical and economic development of the District. The goals and implementing objectives, as well as all polices, as established in the Development Plan and the Development District are hereby incorporated into these Regulations as if those goals, objectives and polices were part of these Regulations.
- 1.04.2 The goal of protecting and enhancing the rural residential and agricultural character of the Bozeman Pass area will be protected and maintained through the following implementing objectives:
- Maintaining or enhancing the quantity and quality of ground and surface waters;
 - Maintaining open space and scenic views;
 - Sustaining wildlife habitat and migration;
 - Preserving and enhancing fish habitats;
 - Maintaining the night sky visibility and low noise levels of the area; and
 - Controlling noxious weeds
- 1.04.3 The goal of protecting and enhancing the character and freedoms associated with living in a rural area will be protected and maintained through the following implementing objectives:
- Ensuring that land use maintains rural character, wildlife, open space, and agriculture;
 - Respecting property rights while ensuring that land use remains compatible with existing uses;
 - Protecting landowners from industrial and commercial development that is inconsistent with the character of the area;
 - Protecting landowners from the impacts associated with oil and gas development and mining;
 - Conserving property values;
 - Ensuring that residential development is consistent with existing residential uses; and
 - Encouraging agricultural uses.

- 1.04.4 These Regulations are intended to aid residents of Gallatin County and the Zoning District, as well as property owners, interested citizens, area business persons, agricultural enterprises, governmental agencies, County planning staff, and members of the Planning and Zoning Commission and Board of County Commissioners in reaching decisions regarding future land use in the Bozeman Pass area. The scope and content are designed to focus on the above objectives and to minimize undue restrictions on the use of private property.

1.05 Invalidation and Severability

- 1.05.1 If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of these Regulations, or any attachments hereto, are for any reason held to be unconstitutional, invalid or void, such decision shall not affect the validity of any of the remaining portions of these Regulations to render the same operative and reasonably effective for carrying out the main purpose and intention of these Regulations.

1.06 Definitions

- 1.06.1 The definitions included in Appendix B are hereby included as part of the Bozeman Pass Zoning Regulation. These definitions are intended to represent a standardized list of definitions adopted by the County Commission for use in Gallatin County planning matters. These definitions may be amended or added to through action in a legally noticed public hearing by the Gallatin County Planning and Zoning Commission and/or County Commission. Such action by the Planning and Zoning Commission or the County Commission shall be deemed to automatically update Appendix B.

Section 2: ZONING SUB-DISTRICT PROVISIONS

2.01 Agricultural and Rural Residential Sub-District (AR40): 40-Acre Density

2.01.1 Intent. The intent of this sub-district is to:

- Preserve and maintain agricultural lands, wildlife habitat and migration routes;
- Protect and maintain agricultural uses;
- Preserve and maintain the rural character and scenic, open space qualities;
- Allow for development that is compatible with agriculture;
- Mitigate the impacts of resource extraction activities; and
- Respect property rights.

2.01.2 Uses Allowed by Right (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of these Regulations, shall be grandfathered. *See* Section 4.02.

1. Agriculture.

- The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grain and other crops;
 - The maintenance and use of pasture and range lands for agricultural purposes;
 - The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of animal feeding operations;
 - The construction and maintenance of barns, corrals and other agricultural buildings and structures accessory to the foregoing uses; or
 - Other facilities for the purpose of preparing and selling products produced on the land, including any value added process, together with accessory accommodation for the convenience of patrons.
2. Cemetery and burial grounds; including use and maintenance of land.
3. Residential dwelling (1).
4. Signs specifically permitted in General Building and Development Standards, Section 3.

2.01.3 Accessory Uses (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of these Regulations shall be grandfathered. *See* Section 4.02.

1. One accessory residential dwelling: for example caretaker residence or guesthouse (non-commercial).
2. Agricultural employee housing, including mobile homes, to house persons and their families whose income is derived from the same farm, ranch, or land unit on which such buildings are situated (development right not required).

3. Use of primary or accessory dwelling unit as family day care home.
4. Excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses.
5. Garage, private residential.
6. Home occupations. *Refer to Development Standards Section 3.01.5*
7. Incidental uses customarily and necessarily related to and included in agriculture.
8. Incidental uses customarily and necessarily related to rural residential.
9. Private electrical generation facilities and lines, which have the purpose of generating and transmitting energy to be used primarily on the property on which the facilities are located.

2.01.4 Minor Conditional Uses (uses allowed upon obtaining a Conditional Use Permit, as described in Section 4.04 and land use permits required).

1. Licensed and/or commercial residential rentals (five bedrooms or less).
2. Residential dwellings for immediate family members (“immediate family” as defined by Montana law).

2.01.5 Major Conditional Uses (uses allowed upon obtaining a Conditional Use Permit, as described in Section 4.04, and land use permits required).

1. Commercial quarries less than five acres in size.
2. Commercial uses and structures that are in keeping with the goals of the regulation and the character of the district.
3. Community receiving and broadcasting antennas, cell towers, microwave relay stations.
4. Houses of worship.
5. Licensed and/or commercial residential rentals (six bedrooms or more), including accessory rental structures, guest ranches, vacation rentals, accessory bed and breakfast operations.
6. Schools, public and private.
7. Signs not specifically permitted.

2.01.6 Natural Resources Conditional Uses (uses allowed upon obtaining a Natural Resource Conditional Use Permit, as described in Sections 4.04 and 4.05 and land use permits required).

1. Coalbed methane exploration and development.
2. Commercial quarries greater than five acres in size.
3. Mining (surface and underground).
4. Oil and gas exploration and development

2.01.7 Development Density.

1. One single-family residence per 40 acres or per parcel of record at the time of adoption of these Regulations. There shall be no minimum lot area and width. Variations in lot size are permitted.
2. Parcels must be 72 acres or larger to subdivide. For parcels 72 acres or larger, the number of allowable development rights is determined by dividing the parcel size by 40 and then using normal means of rounding to arrive at the nearest whole number. Refer to table below.

# of Development Rights	AR40: Parcel Acreage
2	At least 72
3	At least 100
4	At least 140
5	At least 180
6	At least 220
7	At least 260
8	At least 339

3. Refer to Development Standards.

2.01.8 Required Setbacks.

Except as stated in 3.01.6, zero lot line setbacks shall apply to all uses allowed by right and all accessory uses allowed by right. For any conditional use or natural resource conditional use, a reasonable setback may be imposed if required to mitigate impacts resulting from the conditional or natural resource conditional use.

2.01.9 Maximum Height.

Unlimited height restrictions shall apply to all uses allowed by right.

2.02 Agricultural and Rural Residential Sub-District (AR80): 80 Acre Density

2.02.1 Intent. The intent of this sub-district is to:

- Preserve and maintain agricultural lands, wildlife habitat and migration routes;
- Protect and maintain the agricultural economic base;
- Preserve and maintain the rural character and scenic, open space qualities;
- Allow for development which is compatible with agriculture;
- Mitigate the impacts of resource extraction activities; and
- Respect property rights.

2.02.2 Uses Allowed by Right (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of these Regulations shall be grandfathered. *See* Section 4.02.

1. Agriculture.

- The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grain and other crops;
- The maintenance and use of pasture and range lands for agricultural purposes;
- The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of animal feeding operations;
- The construction and maintenance of barns, corrals and other agricultural buildings and structures accessory to the foregoing uses; or
- Other facilities for the purpose of preparing and selling products produced on the land, including any value added process, together with accessory accommodation for the convenience of patrons.

2. Cemetery and burial grounds; including use and maintenance of land.

3. Residential dwelling (1).

4. Signs specifically permitted in General Building and Development Standards, *see* Section 3.

2.02.3 Accessory Uses (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of these Regulations shall be grandfathered. *See* Section 4.02.

1. One accessory residential dwelling: for example caretaker residence or guesthouse (non-commercial).
2. Agricultural employee housing, including mobile homes, to house persons and their families whose income is derived from the same farm, ranch, or land unit on which such buildings are situated (development right not required).
3. Use of primary or accessory dwelling unit as family day care home.
4. Excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses.
5. Garage, private residential.

6. Home occupations. Refer to Development Standards Section 3.01.5.
7. Incidental uses customarily and necessarily related to and included in agriculture.
8. Incidental uses customarily and necessarily related to rural residential.
9. Private electrical generation facilities and lines, which have the purpose of generating and transmitting energy to be used primarily on the property on which the facilities are located.

2.02.4 Minor Conditional Uses (uses allowed upon obtaining a Conditional Use Permit, as described in Section 4 and land use permits required).

1. Licensed and/or commercial residential rentals (five bedrooms or less).
2. Residential dwellings for immediate family members (“immediate family” as defined by state statute).

2.02.5 Major Conditional Uses (uses allowed upon obtaining a Conditional Use Permit, as described in Section 4 and land use permits required).

1. Commercial quarries less than five acres in size.
2. Commercial uses and structures that are in keeping with the goals of the regulation and the character of the district.
3. Community receiving and broadcasting antennas, cell towers, microwave relay stations.
4. Houses of worship.
5. Licensed and/or commercial residential rentals (six bedrooms or more), including accessory rental structures, guest ranches, vacation rentals, accessory bed and breakfast operations.
6. Schools, public and private.
7. Signs not specifically permitted.

2.02.6 Natural Resources Conditional Uses (uses allowed upon obtaining a Natural Resource Conditional Use Permit, as described in Sections 4.04 and 4.05 and land use permits required).

1. Coal bed methane exploration and development.
2. Commercial quarries greater than five acres in size.
3. Mining (surface and underground).
4. Oil and gas exploration and development.

2.02.7 Development Density.

1. One single-family residence per 80 acres or per parcel of record at the time of adoption of these Regulations. There shall be no minimum lot area and width. Variations in lot size are permitted.
2. Parcels must be 144 acres or larger to subdivide. For parcels 144 acres or larger, the number of allowable development rights is determined by dividing the parcel size by 80 and then using normal means of rounding to arrive at the nearest whole number. Refer to table below.

# of Development Rights	AR80: Parcel Acreage
2	At least 144
3	At least 200
4	At least 280
5	At least 360
6	At least 440
7	At least 520
8	At least 600

3. Refer to Development Standards.

2.02.8 Required Setbacks.

Except as stated in 3.01.6, zero lot line setbacks shall apply to all uses allowed by right and all accessory uses allowed by right. For any conditional use or natural resource conditional use, a reasonable setback may be imposed if required to mitigate impacts resulting from the conditional or natural resource conditional use.

2.02.9 Maximum Height.

Unlimited height restrictions shall apply to all uses allowed by right.

Public Lands Sub-District (PL640): 640-Acre Density

2.03.1 Intent. Public Lands are not subject to the requirements of these Regulations. These Regulations shall apply only in the event any parcel of public land within this sub-district is transferred to private ownership. The intent of this sub-district is to:

- Preserve and maintain agricultural lands, wildlife habitat and migration routes;
- Protect and maintain the agricultural economic base;
- Preserve and maintain the rural character and scenic, open space qualities;
- Allow for development that is compatible with agriculture;
- Mitigate the impacts of resource extraction activities; and
- Respect property rights.

2.03.2 Uses Allowed by Right (allowed by right and no land use permits required). All uses in existence at the time of adoption of these Regulations shall be grandfathered. *See* Section 4.02.

1. Agriculture.

- The cultivation of ground, including the preparation of soil, planting or seeding and the raising and harvesting of trees, timber, fruits, vegetables, flowers, grain and other crops;
 - The maintenance and use of pasture and range lands for agricultural purposes;
 - The raising, feeding, managing and breeding of livestock, poultry, fish, birds and other animals, that do not fall under the definition of animal feeding operations;
 - The construction and maintenance of barns, corrals and other agricultural buildings and structures accessory to the foregoing uses; or
 - Other facilities for the purpose of preparing and selling products produced on the land, including any value added process, together with accessory accommodation for the convenience of patrons.
2. Cemetery and burial grounds; including use and maintenance of land.
3. Residential dwelling (1).
4. Signs specifically permitted in General Building and Development Standards, Section 3.

2.03.3 Accessory Uses (uses allowed by right and no land use permits required). All uses in existence at the time of adoption of these Regulations shall be grandfathered. *See* Section 4.02.

1. One accessory residential dwelling: for example caretaker residence or guesthouse (non-commercial).
2. Agricultural ranch employee housing, including mobile homes, to house persons and their families whose income is derived from the same farm, ranch, or land unit on which such buildings are situated (development right not required).
3. Use of primary or accessory dwelling unit as family day care home.
4. Excavation of earth and the drilling of wells, exclusively for agricultural and domestic uses.
5. Garage, private residential.
6. Home occupations. Refer to Development Standards Section 3.01.5.

7. Incidental uses customarily and necessarily related to and included in agriculture.
8. Incidental uses customarily and necessarily related to rural residential.
9. Private electrical generation facilities and lines, which have the purpose of generating and transmitting energy to be used primarily on the property on which the facilities are located.

2.03.4 Minor Conditional Uses (uses allowed upon obtaining a Conditional Use Permit, as described in Section 4 and land use permits required).

1. Licensed and/or commercial residential rentals (five bedrooms or less).
2. Residential dwellings for immediate family members (“immediate family” as defined by state statute).

2.03.5 Major Conditional Uses (uses allowed upon obtaining a Conditional Use Permit, as described in Section 4 and land use permits required).

1. Commercial quarries less than five acres in size.
2. Commercial uses and structures that are in keeping with the goals of the regulation and the character of the district.
3. Community receiving and broadcasting antennas, cell towers, microwave relay stations.
4. Houses of worship.
5. Licensed and/or commercial residential rentals (six bedrooms or more), including accessory rental structures, guest ranches, vacation rentals, accessory bed and breakfast operations.
6. Schools, public and private.
7. Signs, not specifically permitted.

2.03.6 Natural Resources Conditional Uses (uses allowed upon obtaining a Natural Resource Conditional Use Permit, as described in Sections 4.04 and 4.05 and land use permits required).

1. Coalbed methane exploration and development.
2. Commercial quarries greater than five acres in size.
3. Mining (surface and underground).
4. Oil and gas exploration and development.

2.03.7 Development Density.

1. One single-family residence per 640 acres or per parcel of record at the time of adoption of these Regulations. There shall be no minimum lot area and width. Variations in lot size are permitted.
2. Parcels must be 1152 acres or larger to subdivide. For parcels 1152 acres or larger, the number of allowable development rights is determined by dividing the parcel size by 640 and then using normal means of rounding to arrive at the nearest whole number.
3. Refer to Development Standards.

2.03.8 Required Setbacks.

Except as stated in 3.01.6, zero lot line setbacks shall apply to all uses allowed by right and all accessory uses allowed by right. For any conditional use or natural resource conditional use, a reasonable setback may be imposed if required to mitigate impacts resulting from the conditional or natural resource conditional use.

2.03.9 Maximum Height.

Unlimited height restrictions shall apply to all uses allowed by right.

Section 3. GENERAL BUILDING AND DEVELOPMENT STANDARDS

3.01 General Building and Development Standards

3.01.1 Intent. The purpose of this section is to establish general development standards applicable throughout the District. These standards are intended and designed to respect property rights, assure compatibility of uses, protect the environment, protect the rural residential and agricultural character of the District and to enhance the public health, safety and general welfare of District residents and the County by planning for and guiding future growth. These standards supplement the specific sub-district provisions set forth in these Regulations and apply to any and all conditional uses.

3.01.2 Subdivision Development Standards

1. The number of resulting parcels permitted upon subdivision per existing parcel is determined by dividing the total parcel acreage by the allowable density (40 in the AR40 district, 80 in the AR80 district, and 640 in the PL640 district) and then using normal means of rounding to arrive at the nearest whole number. For example, a 150-acre parcel in the AR40 District could be divided into four (4) resulting parcels (150 divided by 40 = 3.75, which rounds to 4). Refer to §2.01.7(2), §2.02.7(2), and §2.03.7(2) for additional requirements and tables.
2. Lot size and width may vary, provided that the resulting development complies with all other requirements of these Regulations and all other state and County regulations.
3. These Standards pertain to all divisions of land (major subdivision, minor subdivision, and any exemptions from subdivision review permissible under Montana law, etc.)
4. For the purpose of tracking any use of development right(s) (or transfer of development right(s) if such transfer is specifically authorized by these Regulations) sufficient documentation of such use or transfer of any development right(s) shall accompany every division of land, as defined by Montana law, describing tracts of land created after adoption of these Regulations. For each development right being used or transferred from a "Sending Tract of Record" one document shall be recorded for the development right(s) being used or transferred and a separate document shall be recorded for any development rights being used on or transferred to a "Receiving Tract of Record." Such documentation shall be in recordable form and be duly recorded with the Gallatin County Clerk and Recorder concurrently with any division of land. The following requirements apply to such documentation and shall include, at a minimum, for each development right being used or transferred:
 - a. Sending Tract of Record. Indicate by legal description the tract of record from which the development right is being used or transferred from ("sending tract of record") and whether any

development right(s) continue to exist on the sending tract of record.

- b. Receiving Tract of Record. Indicate by legal description the tract of record for which the development right is being used or transferred to (“receiving tract of record”).

5. Subdivision of any land within the Bozeman Pass Zoning District is subject to the Montana Subdivision and Platting Act, the Montana Sanitation in Subdivision Act, other applicable Montana law and the Gallatin County Subdivision Regulations.

3.01.3 Animal-Proof Refuse Containers. All refuse shall be stored in animal-proof containers or made unavailable to all domestic and wild animals.

3.01.4 Bed and Breakfast Homes. All bed and breakfast homes shall be subject to the following regulations:

1. The proprietor or operator shall reside in the bed and breakfast home.
2. Food service shall be limited to breakfast, which may be served to overnight guests only, and shall be prepared from a central kitchen facility.
3. There shall be no alteration to the exterior of the structure, which would detract from the residential character. Any alteration to the exterior of the structure, which is for the purpose of increasing the number of guest rooms, shall be reviewed as a conditional use.
4. One parking space per guest room plus one additional space for each non-resident worker shall be provided.
5. Additional standards in these Regulations shall apply, including but not limited to stream setback and sign standards.

3.01.5 Home Occupations. Home occupations are defined as the use of a portion of the property, dwelling or accessory structure as an office, studio, or workshop for occupations at home. The activity must be clearly incidental to the agricultural or residential use of the property. In addition, the activity shall not cause a nuisance to surrounding landowners.

3.01.6 Perennial Stream Setbacks. All buildings and site improvements shall maintain a minimum setback from the ordinary high water line of all perennial streams. The minimum setback shall be in accordance with the requirements for watercourse setbacks established by the Gallatin County Subdivision Regulations and any other applicable provision of Montana law.

3.01.7 Signs. Signs, not exceeding 32 square feet in area, are permitted. Flashing or blinking lights shall be prohibited.

1. Illuminated signs for advertising goods or services provided on the property on which the signs are located, and which are lit without direct light escaping, are allowed.

3.01.8 Wildfire Mitigation.

1. All structures shall use only Class A or B fire-rated roofing materials.
2. Spark arrestor screens shall be placed on fireplace and wood stove chimneys.
3. Smoke detectors shall be installed on each level of every dwelling unit.
4. Defensible space shall be created and maintained in accordance with the vegetation reduction and clearance guidelines of the *Fire Protection Guidelines for Wildland Residential Interface Development* (or other manual acceptable to the Zoning Enforcement Agent).
5. “Defensible space” shall be defined as a designated area around a home or other structure the size of which is dependent on the vegetation, proximity of tree crowns, slope and distance to adjacent buildings. Within this area all weeds, dry grass, slash, flammable debris and flammable fuel is removed. This managed buffer surrounding buildings and structures is designed to reduce the chances of a fire spreading to or from the buildings or structures.

3.01.9 Weeds. All property owners must meet the Gallatin County standards for weed control.

3.01.10 Fences. All fences bordering agricultural lands shall be maintained by the property owners in accordance with Montana law.

Section 4: ADMINISTRATION PROVISIONS

4.01 Administration

- 4.01.1 Planning and Zoning Commission. The seven-member Bozeman Pass Planning and Zoning Commission consists of the three Gallatin County Commissioners, the County Surveyor, a County official appointed by the County Commission, and two citizen members appointed by the County Commission. The Bozeman Pass Planning and Zoning Commission is granted the powers “as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes” of Montana law and of these Regulations (§76-2-103, MCA).
- 4.01.2 Advisory Committee (Committee). A Bozeman Pass Advisory Committee may be created by the Gallatin County Board of County Commissioners upon recommendation of the Bozeman Pass Planning and Zoning Commission. The Advisory Committee, upon creation, shall consist of five members, appointed by the Planning and Zoning Commission without ratification by the Board of County Commissioners. Members of the Advisory Committee shall be freeholders in the District. This shall be a non-remunerative committee. Committee members shall be appointed for two-year, staggered terms. Upon initial creation, the Planning and Zoning Commission shall appoint three members for two-year terms and two members for a term of one year. Thereafter, members shall be appointed for a term of two years. The Advisory Committee, upon establishment, shall create By-Laws for its operation and those By-Laws shall be approved by the Gallatin County Commission. The Advisory Committee may consider, formulate and transmit a recommendation to the Planning and Zoning Commission on any applications, petitions or alleged violation of these Regulations within the District. The recommendation shall be advisory only and shall not be binding upon the Planning and Zoning Commission or the County Commission. All meetings of the Advisory Committee shall be properly noticed and open to the public in accordance with the Montana Open Meetings Law.
- 4.01.3 Zoning Enforcement Agent. The Zoning Enforcement Agent issues all land use permits and reviews all applications, including violations, conditional use permits, variances, rezoning requests and amendments to these Regulations. The Zoning Enforcement Agent and staff work for the Planning and Zoning Commission and the County Commission in an advisory capacity.
- 4.01.4 Gallatin County Code Compliance Specialist. The Code Compliance Specialist ensures compliance with the provisions of this Regulation in conjunction with the Zoning Enforcement Agent. This consists of, but is not limited to, revoking land use permits, issuing cease and desist orders, requiring removal/ dismantling of structures, determining compliance with the Regulation, and issuing fines. All decisions made by the Code Compliance Specialist follow the same administrative and appeals procedures as that of the Zoning Enforcement Agent.

4.01.5 Appeals Process.

1. Appeals to the Planning and Zoning Commission.

Those aggrieved by Zoning Enforcement Agent's and/or Code Compliance Specialist's decisions may submit written appeals specifying the grounds thereof to the Planning and Zoning Commission. Appeals must be filed within thirty (30) days of the Zoning Enforcement Agent's and/or Code Compliance Specialist's written decision and be accompanied by the appropriate fee. An appeal stays all proceeding in furtherance of the action appealed from unless the Zoning Enforcement Agent and/or Code Compliance Specialist determines that a stay could cause imminent peril to life or property.

Upon receipt of a written appeal, a public hearing shall be scheduled before the Planning and Zoning Commission for its next available meeting date. Notice of the hearing shall be published once in a newspaper of general circulation at least fifteen (15) days prior to the hearing. The Planning and Zoning Commission will accept testimony at the hearing from persons interested in the appeal, the appellant and/or their attorney, and the Zoning Enforcement Agent and/or Code Compliance Specialist.

2. Appeals to District Court.

Pursuant to MCA § 76-2-110, those aggrieved by the Planning and Zoning Commission and/or County Commission's decisions may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days upon receipt of the written decision made by the Commission at a public meeting.

4.01.6 Schedule of Fees. The County Commission sets fees for all permit applications, zone changes, conditional use permits, variances, and appeals. The Planning and Zoning Commission and/or County Commission will not take action on an item until fees are paid in full. Fees are non-refundable.

4.01.7 Authorization to Enter: Any application made pursuant to these Regulations for any land use permit, or any conditional use guarantees the right of the Planning and Zoning Commission or any of their agents or employees to enter upon the property subject to the application at a reasonable time without prior notice, for inspection of the property in order to review the application. In no event, however, does this authorization permit the Planning and Zoning Commission, its agents or employees, to enter any occupied building or structure without express consent of the Applicant.

4.02 Non-Conforming Lots, Uses and Structures

- 4.02.1 Intent. Within the District there are lots, uses and structures that were lawful prior to the adoption of these Regulations but no longer conform to present requirements. In accordance with Montana law, it is the intent of these Regulations to establish a “grandfather” clause, allowing such lots, uses and structures to remain. To avoid undue hardship, nothing in these Regulations shall be deemed to require a change in the construction or designated use of any structure on which actual construction was lawfully begun prior to the effective date of adoption or amendment to these Regulations.
- 4.02.2 Non-conforming lots. All lots within the District in existence at the time of adoption of these Regulations shall be treated as conforming. Given the nature of density-based zoning, and no minimum or maximum lot size, upon adoption of these Regulations, there are no non-conforming lots within the District. The use of subdivision exemption to relocate a common boundary between neighbors that makes one parcel larger but also one parcel smaller is permitted so long as the adjusted property boundary does not conflict with the goals and objectives of these Regulations and does not create additional development rights. The requirements of 3.01.2(4) apply. Boundary line adjustments and other statutory exemptions from the Subdivision and Platting Act shall be reviewed by the Gallatin County Commission, pursuant to the Gallatin County Subdivision Regulations.
- 4.02.3 Non-conforming uses. Uses which were lawful prior to adoption and/or amendment of these Regulations but no longer conform to present requirements are allowed to remain provided:
1. Such use is not moved in whole or in part to any portion of the lot or parcel other than its original location at adoption and/or amendment of these Regulations.
 2. Any expansion, enlargement, or extension of such use receives a Conditional Use Permit (CUP).
- 4.02.4 Non-conforming structures. All structures in existence prior to adoption and/or amendment of these Regulations will be treated as conforming and may be replaced, altered, repaired, improved, and expanded as necessary.
- 4.02.5 Abandonment. Any non-conforming use shall lose its grandfathered status and shall thereafter conform to these Regulations if said use is abandoned for a period of five (5) years or more, or if said use is altered to a conforming use.
- 4.02.6 Voluntary abandonment. Any person who has the right to continue a non-conforming use or structure determined to be a valid non-conforming use or structure may voluntarily abandon such use or structure, in which case the right of use or structure shall cease to exist. Any subsequent use or structure thereafter shall require review under these Regulations and may any use or structure subsequent to a voluntary abandonment shall not revert to a valid non-conforming use or structure.

4.02.7 Zoning Enforcement Agent Determination. The Zoning Enforcement Agent and/or Code Compliance Specialist determines the status of non-conforming land uses and structures under the following procedure:

1. The owner of record of subject use/structure shall make an application for a determination of status.
2. The applicant bears the burden of showing entitlement to an approved non-conforming status by providing sufficient supporting information. Such information may include, but is not limited to: septic or sewer hook-up permits, land use permits, business permits and dated photographs.
3. The Zoning Enforcement Agent and/or Code Compliance Specialist shall determine on a case-by-case basis whether a land use or structure is an existing non-conforming use or structure.
4. Appeals of Zoning Enforcement Agent and/or Code Compliance Specialist decisions may be submitted under the Administrative Appeal Process.

4.03 Land Use Permits (LUP)

4.03.1 Process. Landowners shall submit LUP applications (with accompanying fee) to the Planning Department for new structures as defined by these Regulations (*see* list of uses requiring land use permits). The Planning Department inspects applications to determine if projects comply with provisions of these Regulations.

4.03.2 Septic Permits. Landowners shall provide proof of septic or sewer permits with those projects that contemplate new facilities or extension of existing facilities.

4.03.3 Appeals. Appeals of Zoning Enforcement Agent decisions regarding issuance or denial of a LUP may be submitted under the Administrative Appeal Process.

4.03.4 Expiration. A LUP expires if building or work authorized by the LUP has not commenced within twelve (12) months from the original permit date. Landowners must obtain a new LUP, at one-half the fee, to re-commence work.

4.04 Conditional Use Permits – Major, Minor, Natural Resources

4.04.1 Intent. Conditional Use Permits (CUPs) are required prior to operation of a use that is not a use allowed by right, but allowed conditionally under the standards for each sub-district within these Regulations.

4.04.2 CUP Categories. Different conditional uses within each sub-district qualify for a Major CUP, Minor CUP, or a Natural Resource CUP. Depending upon the category, the Planning and Zoning Commission shall refer to explicit criteria in either approving, disapproving, or conditionally approving such use. A Minor CUP is a use that has minimal impacts on surrounding properties or the goals and objectives of these Regulations and as a result requires a lower level of review. A Major CUP is a use that potentially has a greater impact on surrounding properties and the goals and objectives of these Regulations and as a result requires a heightened level of review.

A Natural Resource CUP is required for certain uses as described in the standards for each sub-district and have a greater impact on surrounding properties and the goals and objectives of these Regulations and as a result require a level of review far greater than a Major CUP. Therefore, certain procedural requirements are required for a Natural Resource CUP that are not required for a Minor CUP or a Major CUP. The Gallatin County Planning Department may require different fee schedules for a Minor CUP, a Major CUP or a Natural Resource CUP.

4.04.3 Requirements for a Minor CUP and a Major CUP. Structures or land within the District may not be used for any purpose unless such use is specifically listed as a use allowed by right or conditional use in these Regulations. The Planning and Zoning Commission may grant a conditional use for a Major or Minor CUP upon finding:

1. The use conforms to the objectives of the Gallatin County Growth Policy, the goals and implementing objectives of the Bozeman Pass Development Pattern and Development District, and the intent of these Regulations;
2. The use will not adversely affect nearby properties or their occupants;
3. The use meets density, and all other Regulations of the District in which it is located, unless otherwise provided in these Regulations; and
4. A public hearing, after notice has been given, has been held.

4.04.4 Conditional Approval for All CUP Categories. The Planning and Zoning Commission may make the granting of a CUP subject to reasonable limitations or conditions as it may deem necessary to enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area or to make it more acceptable in other ways. The conditions may include but not be limited to the following:

- a. Regulation of landscaping and its maintenance.
- b. Regulation of height.
- c. Regulation of lighting.
- d. Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat and noise.
- e. Regulation of placement of uses on the property.
- f. Regulation of signs.
- g. Regulation of the length of time such use may be permitted.
- h. Regulation of the nature and extent of the use.
- i. Regulation of time of activities that have off-site impacts.
- j. Regulation of vehicular ingress and egress.
- k. Requirement for dedication or improvements of rights-of-way.
- l. Requirements for restoration of property.
- m. Special setbacks, yards, open spaces, buffers, fences and walls.
- n. Appropriate fire mitigation.
- o. Time schedule of proposed development.

4.04.5 General Conditions Applicable to All CUPs. The Planning and Zoning Commission shall, in addition to all other conditions described in these Regulations, impose the following general conditions upon every CUP granted:

- a. That the right to a use and occupancy permit shall be contingent upon the fulfillment of all general and special conditions imposed by these CUP procedures; and
- b. That all of the special conditions shall constitute restrictions running with the land use, shall apply and be adhered to by the owner of the land, its agents, successors or assigns, shall be binding upon the owner of the land, its agents, successors or assigns, shall be consented to in writing, and shall be recorded as such with the Gallatin County Clerk and Recorder's Office by the property owner prior to the issuance of any building permits, final site plan approval, LUP, or commencement of the conditional use.

4.04.6 Procedure for All CUP Categories. All CUP applications shall be submitted to the Planning Department on the required form with the accompanying fee. The Planning Department shall schedule a hearing on the matter before the Planning and Zoning Commission. The Planning and Zoning Commission shall either approve or deny the application and if approved, the Planning and Zoning Commission may impose reasonable conditions as may be necessary to mitigate the impacts of the use. Use cannot commence until all conditions have been met.

4.04.7 Notice for All CUP Categories. Notice of the public hearing shall be published twice at least 15 days prior to the hearing in a newspaper of general circulation in Gallatin County. In addition to the above requirement for public notice, for a Major CUP, adjacent property owners shall be noticed by certified mail and for a Minor CUPs, the adjacent property owners shall be noticed by regular mail.

4.04.8 Issuance of Land Use Permits for All CUP Categories. No LUP shall be issued other than in accordance with the conditions and terms of the CUP. No LUP shall be issued until time for appeal on a CUP has elapsed, or if an appeal has been filed, the appeal has been decided.

4.04.9 Revocation or Modification for All CUP Categories. The Planning and Zoning Commission may revoke or modify a CUP under the following circumstances (under the procedure described above):

1. If circumstances related to the initial approval of the CUP have changed substantially since original approval;
2. Revocation or modification is necessary to protect the health, safety, or welfare of the area, or is necessary to preserve the integrity of existing use patterns in the area; or
3. The person holding the permit has not complied with the required conditions.

4.04.10 Expiration/Extensions/CUP for Definite Term. The Bozeman Pass Planning and Zoning Commission may issue a Major CUP or a Natural Resource CUP for a definite term. Extensions can be obtained through written application made thirty (30) days prior to expiration, with accompanying fee and notification sent to adjacent property owners. An extension shall be granted if no objection is received. A public hearing will be held if objection is received and said public hearing shall be subject to the notice requirements of this Section. Failure to apply for an extension of an approved CUP for a definite term shall require a new Major CUP or Natural Resource CUP application.

4.05 Natural Resources Conditional Use Permits

4.05.1 Natural Resources CUP Requirements. In addition to any applicable requirement in Section 4.04, any use classified as a conditional use requiring a Natural Resource CUP shall comply with the requirements of this Section. In addition to all uses listed in each sub-district that require review under this Section, all uses and structures incidental to such use shall require review under the conditional use permit process described in this Section. The Planning and Zoning Commission may grant a permit for a use classified as a Natural Resource Conditional Use only if it is found:

1. The use conforms to the objectives of the Gallatin County Growth Policy, the goals and implementing objectives of the Bozeman Pass Development Pattern and Development District, and the intent of these Regulations;
2. The use will not adversely affect nearby properties, residents, groundwater, streams and wetlands;
3. That non-renewable resource exploration and development occurs in a responsible manner;
4. The use contributes and guarantees payment of an appropriate share of the costs for public services and facilities;
5. That adequate financial security, as determined by the Gallatin County Attorney, has been provided to mitigate any such adverse effect;
6. The use meets density, coverage, yard, height, and all other regulations of the district in which it is located, unless otherwise provided in these Regulations;
7. The use meets all other applicable federal, state, and local regulations; and
8. A public hearing, after notice has been given, has been held.

4.05.2 Procedure for Obtaining a Natural Resources CUP. An applicant for a Natural Resources CUP shall submit the preliminary application, as described in Section 4.05.3, accompanied by the appropriate fee, to the Planning Department. Upon determination that the application is complete, the Planning Department shall schedule a hearing before the Planning and Zoning Commission and provide the required legal notice. The Planning and Zoning Commission may not deny a preliminary application but shall take public comment on the content of the Initial Development Plan. The Planning and Zoning Commission shall provide the applicant with its comments on the Initial Development Plan in writing within 15 working days of the public hearing on the preliminary application.

Subsequent to completion of the preliminary application process, an applicant for a Natural Resources CUP may submit the final application, as described in Section 4.05.4, accompanied by the appropriate fee, to the Planning Department. Upon determination that the application is complete, the Planning Department shall schedule a hearing before the Planning and Zoning Commission and provide the required legal notice. The Planning and Zoning Commission shall consider the application material, applicant testimony, the Staff Report and public comment. The Planning and Zoning Commission shall not grant a Natural Resources CUP unless the findings required under Section 4.05.1 are satisfied. The Planning and Zoning Commission shall provide the applicant with written findings regarding its decision.

4.05.3 Preliminary Application. Applicant shall submit a Preliminary Application to the Planning Department. The full fee established under the Planning Department Fee Schedule shall accompany all Preliminary Applications. The Preliminary Application shall include the following:

1. Twelve Copies of a completed conditional use permit application form and an Initial Development Plan, prepared by the Applicant or Applicant's agent. Said plan, which shall be the preparatory basis for the Environmental Impact Study, shall address all of the following:
 - a. Cover letter describing project and submittal material;
 - b. Copy(s) of all associated mineral leases;
 - c. Copy(s) of all applicable orders from the Montana Board of Oil and Gas Conservation, and with associated stipulations;
 - d. Name and location of all water wells, springs, and surface water within a one-and-a-half mile radius of proposed site;
 - e. Detailed site inventory map and site development plan (1" = 50'), to include all existing and proposed structures, well pad location(s), rights-of-way, fencing, lighting, pipelines, pertinent surface features, areas of wildlife and wildlife habitat, and all development and mitigation measures associated with application. Applicant shall submit color photos of well location and of area from proposed well to north, south, east and west;
 - f. Complete written description of project including but not limited to: proposed hours of operation; duration of project; operation of project, including staffing schedule(s) and estimated trips per day; traffic study and/or other information as required by the Gallatin County Road and Bridge Superintendent; fire and disaster mitigation plan(s); etc.;
 - g. An approved Noxious Weed Control and Revegetation Plan through the Gallatin County Weed Control District;
 - h. Plans for reclamation of all disturbances associated with project(s); and
 - i. Any additional information as deemed necessary by the Planning Department during the Planning Department's initial review.
2. Name and address of all property owners within a one-and-a-half mile radius of proposed project, including postage for certified mail to each address.

4.05.4 Final Application. Applicant shall submit a Final Application to the Planning Department. The full fee established under the Planning Department Fee Schedule shall accompany all Final Applications. The Final Application shall include a completed conditional use permit application, a Final Development Plan, and an Environmental Impact Statement, (EIS) conducted by a third-party Montana State licensed professional engineer (PE) qualified to evaluate the project's impacts, at the Applicant's expense. The Final Application shall also contain all required Performance Bonds and other securities and fees as indicated below.

1. Applicant shall provide the Final Development Plan based on information provided in the (EIS). The Final Development Plan shall:
 - a. Provide evidence of the fee simple surface owner's consent;
 - b. Document plans to protect property values of surrounding properties;
 - c. Document plans for fire protection and emergency response;
 - d. Document adequate water quantity for the proposal;
 - e. Demonstrate plans for protecting surface and ground water quality;
 - f. Demonstrate plans for conservation of important fish, wildlife and plant habitat;
 - g. Demonstrate plans for compliance with local, state and federal air quality regulations and/or standards;
 - h. Demonstrate plans for landscaping and its long-term maintenance so as to limit soil erosion and be in compliance with all local, state and federal soil management and conservation regulations and/or standards;
 - i. Demonstrate plans to comply with all applicable weed control regulations;
 - j. Include a schedule of phased-in development to diffuse impacts over time;
 - k. Demonstrate plans for compliance with §§ 85-2-505 and 82-11-175, MCA, and any other applicable local, state and federal laws or regulations regarding disposal of all ground water involved with the proposal; and
 - l. Demonstrate plans for sufficient reclamation for any and all disturbances associated with the project(s).
 - m. Address all comments raised by the Planning and Zoning Commission as a result of their review of the Preliminary Application.
2. The EIS shall include:
 - a. Appraisal of current property values for all properties within one-and-a-half miles of the boundaries of the proposal;
 - b. An analysis of effects of proposed development on fire and emergency response systems;
 - c. Thorough collection of fish, wildlife and plant inventories within the proposal's boundaries;
 - d. Collection of baseline data of existing surface and ground water quality and quantity;
 - e. Collection of baseline data of existing air quality;
 - f. Collection of baseline data of existing noise levels;

- g. An analysis by a qualified person or entity of the Final Development Plan's specific measures to protect and conserve: (1) property values; (2) water quality and quantity; (3) agricultural and conservation usage; (4) plant and wildlife habitat; (5) air quality; and (6) noise levels; and
- h. A Monitoring Schedule for effective third party monitoring, on at least a monthly basis, by a State of Montana licensed and bonded environmental engineer, of all development, as stated in the submitted Final Development Plan. The Bozeman Pass Planning and Zoning Commission shall approve the Monitoring Schedule. The licensed and bonded environmental engineer third party monitor shall be agreed upon by the Bozeman Pass Planning and Zoning Commission and the Applicant. The Monitoring Schedule shall contain all the requirements listed in Section 4.05.4.

4.05.5 Monitoring Schedule. The Monitoring Schedule must provide a mechanism for prompt notification to any and all local, state, or federal agencies involved in any permit or certification required for the proposal. The purpose of such notification is to ensure adequate enforcement of existing local, state and federal laws and regulations to protect private property and other rights of Montana citizens and Montana's natural resources. The Monitoring Schedule shall require the Applicant to prepare and submit to the Planning Department a Monthly Monitoring Report.

- 1. Monthly Monitoring Report. The Monthly Monitoring Report shall include a description of all data collected during the period, as well as data trends collected over time, detailed descriptions of any and all spills, leaks, contaminations, regardless of whether the spill, leak or contamination is a violation of local, state or federal laws or regulations. The Monthly Monitoring Report shall also include a detailed description of any violation of local, state, or federal laws or regulations and any corrective action taken. The Monthly Monitoring Report shall be a requirement of conditional approval and the failure to supply such Monthly Monitoring Report may be grounds for revocation of a Natural Resource CUP.
- 2. Monitoring Expenses/Performance Bonds. Such monitoring shall be at the sole expense of the Applicant, and a specific Monitoring Performance Bond shall guarantee all costs of monitoring. The Monitoring Performance Bond shall be approved by the Gallatin County Attorney and made payable to the environmental engineer selected as the third party monitor. Gallatin County shall be a beneficiary of the Monitoring Performance Bond and shall have express authority to collect upon said bond in the event Applicant, their successors or assigns, fails to adequately monitor the project. The Monitoring Performance Bond shall be updated annually and shall provide for payments and expenses of all monitoring for no less than a 10-year period from the date of each update. Failure to maintain payment to the monitor and failure to maintain an adequate Monitoring Performance Bond for all monitoring expenses for no less than 10 years from the date of each update shall be cause for revocation of the conditional use permit. The Monitoring Performance Bond shall be in addition to any required reclamation bond or other performance bond required by any other local, state, or federal agency.

4.05.6 Conditional Approval. Final Applications for a Natural Resource CUP may be approved, conditionally approved or denied by the Bozeman Pass Planning and Zoning Commission. If a Final Application is denied, the denial shall constitute a finding that the Applicant has failed to sufficiently demonstrate that the conditions required for approval do exist. The Bozeman Pass Planning and Zoning Commission shall make the granting of the Natural Resource CUP subject to reasonable limitations or conditions as it may deem necessary to protect the health, safety, and general welfare of the citizens of the County and District; to mitigate or avoid any and all adverse impacts on nearby property, residents, groundwater, streams and wetlands; to ensure that resource exploration and development occurs in a responsible manner and contributes and guarantees payment of an appropriate share of the costs for public services and facilities; and to make the proposed Natural Resource conditional use more compatible and consistent with the intent of the Bozeman Pass Development Pattern and Development District, Zoning Regulations, and the Gallatin County Growth Policy. Said conditions may include but not be limited to the following:

- a. Specific requirements for vehicular ingress and egress;
- b. Specific requirements of hours of operation;
- c. Specific requirements for the discharge of groundwater and surface water;
- d. A fee for discharged effluent, based upon one and one-half times the total estimated or actual costs of all environmental cleanup or mitigation performed by or for any public agency, in order to achieve compliance with these Regulations;
- e. Specific requirements for control of odors, smoke, dust, airborne particles, vibration, glare and noise emissions from point and non-point sources;
- f. Specific requirements for placement and height of structures required for the conditional use on the subject property;
- g. Specific requirements for dedication, improvements and/or maintenance of rights-of-way;
- h. Limitation of length of time or term such conditional use may be permitted;
- i. Conditions for the approval may include changes to the Development Plan based upon information and data from the EIS and the public hearing(s) and the written comments from the public, so as to improve environmental and property protection;
- j. The Planning and Zoning Commission shall impose conditions requiring the developer to use best available low-impact technologies, such as aquifer recharge, clustered development, directional drilling, mufflers for compressor stations, discharge water desalination, infiltration or treatment, etc., to minimize impacts on underground water reserves, rivers and streams, and surface resources.
- k. The Planning and Zoning Commission shall impose conditions requiring the Applicant to guarantee complete reclamation of all disturbed areas. This guarantee shall be accomplished by requiring, in addition to the Monitoring Performance Bond, *supra*, any Applicant for any mineral, oil and gas exploration or extraction, along with all contractors and subcontractors to post separate site-specific performance bonds for each tract of property affected by the proposed Natural Resource CUP. Said performance bonds shall be approved by the Gallatin County Attorney, payable to Gallatin County, and shall be equal

to or greater than the current value of the property plus the potential cleanup cost of any resultant air, land or water pollution or degradation, as estimated by the required Development Plan and Environmental Impact Study. Failure to maintain adequate performance bonding shall be cause for revocation of the CUP.

- 4.05.7 Expiration/Extension. The Planning and Zoning Commission may issue a Natural Resource CUP for a definite term. Extensions can be obtained through written application with accompanying fee made at least thirty (30) days prior to expiration. A public hearing will be held and adjacent property owners will be notified by certified mail. Notice of the public hearing shall be published at least fifteen (15) days prior to the hearing, in a newspaper of general circulation.

4.06 Variances

- 4.06.1 Intent. It is the intent of this section to provide a process under certain circumstances to deviate from the literal requirements of these Regulations. The County Commission, after considering the recommendations of the Bozeman Pass Planning and Zoning Commission, is authorized to grant certain variances that are not contrary to public interest, where, owing to special conditions, literal enforcement of this Regulation results in an unnecessary hardship.

- 4.06.2 Criteria. In granting a variance, the Planning and Zoning Commission and County Commission shall consider the following criteria:

- a. Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same zone or vicinity and that result from lot size or shape, topography, or other circumstances over which the owners of property have no control since enactment of this Regulation.
- b. The variance is necessary for the preservation of a property right of the applicant that is substantially the same as that possessed by owners of other property in the same zone.
- c. The variance would not be materially detrimental to property in the same zone or vicinity in which the property is located.
- d. The variance requested is the minimum variance that would alleviate the hardship.

- 4.06.3 Procedure. All variance applications shall be submitted to the Planning Department on the required form with the accompanying fee. A joint public hearing on the matter is scheduled before the Planning and Zoning Commission and County Commission. The Planning and Zoning Commission shall forward a recommendation to the County Commission to approve, conditionally approve, or deny the variance. The County Commission shall approve, conditionally approve, or deny the variance based on the facts. The County Commission may impose reasonable conditions as it may deem necessary to mitigate project impacts.

- 4.06.4 Notice. Notice of the public hearing shall be published twice at least fifteen (15) days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.

4.07 Amendments

- 4.07.1 Intent. These Regulations, the Development Pattern and Development District may be amended whenever the public necessity and convenience and general welfare requires such amendment. Amendments shall follow the procedure prescribed by law and these Regulations.

- 4.07.2 Procedure. An amendment may be initiated by:

- a. A request by the Advisory Committee to the Planning and Zoning Commission;
- b. The petition of one or more landowners in the District. The petition shall be filed with the Zoning Enforcement Agent on the required application, accompanied by the required fee;
- c. Resolution of intention of the Planning and Zoning Commission; or
- d. Resolution of intention of the County Commission.

- 4.07.3 Advisory Committee Meeting. Proposed amendments may first be presented at a community meeting before the Advisory Committee, if established. The Advisory Committee may prepare a report based on the discussion at the meeting, indicating whether it recommends adoption of the proposed amendment.

- 4.07.4 Planning and Zoning Commission Public Hearing. All proposed amendments shall be considered by the Planning and Zoning Commission at a public hearing. The Planning and Zoning Commission shall schedule a hearing on the proposed amendment. Notice of the hearing shall be given in a newspaper of general circulation in Gallatin County not less than fifteen (15) days prior to the date of the hearing.

The Planning and Zoning Commission shall conduct a hearing on the proposed amendment. At the hearing, the Planning and Zoning Commission shall consider the Advisory Committee report, take testimony from interested persons, and determine whether the proposed amendment is consistent with the Development Pattern and Development District for the District, unless the amendment is a request to amend the Development Pattern and Development District. . If the Planning and Zoning Commission finds that the proposed amendment is consistent with the Development Pattern and Development District, it may adopt the amendment. If the Planning and Zoning Commission finds that the proposed amendment is not consistent with the development pattern, no action shall be taken.

- 4.07.5 County Commission Hearing. The Planning and Zoning Commission shall make a recommendation to the County Commission regarding the proposed amendment and the County Commission shall, upon receipt of the recommendation, conduct a public hearing on the amendment. Notice of the hearing shall be given in a newspaper of general circulation in Gallatin County not less than fifteen (15) days prior to the date

of the hearing. At the hearing, the County Commission shall consider the Advisory Committee report, the recommendation from the Planning and Zoning Commission, take testimony from interested persons, and determine whether the proposed amendment is consistent with the Development Pattern and Development District for the District, unless the amendment is a request to amend the Development Pattern and Development District. If the County Commission finds that the proposed amendment is consistent with the Development Pattern and Development District, it may adopt the amendment. If the Planning and Zoning Commission finds that the proposed amendment is not consistent with the Development Pattern and Development District, no action shall be taken.

4.08 Complaints and Enforcement

4.08.1 Intent. It is the duty of the Planning and Zoning Commission, the County Commission, its officers, agents and employees to enforce the provisions of these Regulations.

4.08.2 Complaints. Any person may file a signed, written complaint with the Zoning Enforcement Agent and/or Code Compliance Specialist addressing a violation of these Regulations. The complaint shall fully describe the facts supporting the complaint.

Upon receipt of a written, signed complaint, the Zoning Enforcement Agent and/or Code Compliance Specialist shall record and investigate the complaint, and determine if a violation exists. If the Zoning Enforcement Agent and/or Code Compliance Specialist determine a violation exists, then they shall take appropriate action to resolve the violation. The name of the person filing the complaint shall remain confidential until the violation is resolved and/or there is a public hearing on the matter.

Upon receipt of an anonymous or verbal complaint, the Zoning Enforcement Agent and/or Code Compliance Specialist shall investigate the complaint, and may take appropriate action as time permits.

4.08.3 Investigations. When investigating an alleged violation, the Zoning Enforcement Agent and/or Code Compliance Specialist shall review these Regulations and other applicable public information regarding the alleged violation. The Zoning Enforcement Agent and/or Code Compliance Specialist may perform an inspection of the alleged violation from a public road or from a neighboring property where permission has been granted for access. The Zoning Enforcement Agent and/or Code Compliance Specialist may also notify the alleged violator, and request access for an inspection. If access is denied, the investigator may seek an administrative warrant. Permission for access is assumed in the event an alleged violator has a pending permit application on file with the Planning Department. The investigator shall document the inspection with written notes and/or photographs as appropriate.

4.08.4 Administrative Remedies. Pursuant to MCA § 76-2-113, and in addition to those remedies provided by law, and with reasonable cause, the Zoning Enforcement Agent and/or Code Compliance Specialist may revoke any land use permit, issue cease and desist orders requiring cessation of any building, moving, alteration or use which is in violation of these Regulations, and/or require mitigation and/or corrective action, including, but not limited to, dismantling or removal of non-complying structures, to remedy the violation.

4.08.5 Administrative Fine. In addition to the above, and upon a recommendation from the Code Compliance Specialist and/or the Zoning Enforcement Agent, the Planning and Zoning Commission may, after a public hearing, duly noticed, assess violators fines of up to \$500 per violation for noncompliance. Each day of violation may be considered a separate offense. When determining the amount and duration of a fine,

the Planning and Zoning Commission shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. In addition, the violator may be required to pay administrative costs. If the fine is not paid, it shall become a lien upon the property.

- 4.08.6 Injunction. After the exhaustion of administrative remedies, the County Attorney, in conjunction with the Code Compliance Specialist and/or the Zoning Enforcement Agent, may bring an action in the name of the County of Gallatin in the District Court to enjoin any violations of these Regulations.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent or other person/entity who commits, participates in, assists or maintains such violation may each be held accountable for a separate violation.

- 4.08.7 Remedies, Cumulative. The remedies provided for herein shall be cumulative and not exclusive.